

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 10

SANDY'S CUSTOM UPHOLSTERY

Employer

and

Case 10-RC-15509

UNITED AUTOMOBILE WORKERS  
REGION 8

Petitioner

REGIONAL DIRECTOR'S DECISION AND  
DIRECTION OF ELECTION

Sandy's Custom Upholstery is a Michigan corporation with an office and place of business located in Atlanta, Georgia. The Petitioner, United Automobile Workers, Region 8, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit consisting of all "regular full-time and regular part-time employees, including pickers/sequencing employees, truck unloaders and sorters employed by the Employer at its 4350 International Parkway, Suite A facility, but excluding all office clerical employees, guards and supervisors as defined in the Act."<sup>1</sup> A hearing officer of the Board held a hearing and the parties made oral argument and both the Employer and Petitioner filed briefs, which were duly considered.

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<sup>1</sup> The cited unit description reflects an amendment by the Petitioner at the hearing.

There is one issue herein. The, Petitioner, contrary to the Employer, contends that Team Leaders Mark Sierras and Robert Bryson are Section 2(11) supervisors and, therefore, should be excluded from any unit found appropriate.<sup>2</sup>

I have considered the evidence and the arguments presented by the parties on the issue of whether the team leaders are statutory supervisors. As discussed below, I have determined that the Petitioner has not demonstrated that the team leaders are Section 2(11) supervisors and I shall, therefore, include Sierras and Bryson in the unit.<sup>3</sup>

To provide a context for my discussion of these issues, I will first provide an overview of the Employer's operations. I will then present in detail the facts and reasoning that support my conclusion on the supervisory issue.

### **I. OVERVIEW OF THE EMPLOYER'S OPERATIONS**

The Employer is engaged in the sequencing and sorting of car seat covers for the Lear Corporation, a supplier to the Ford Motor Company who provides the finished product for installation into Ford automobiles.

The Employer employs approximately 27 employees, consisting of pickers/sequencers, truck unloaders, sorters and the disputed classification of team leader.

Seat covers and trim arrive at the Employer's facility via truck. The truck unloaders will unload the "batches" and place them in bins or racks. A single truck may hold as many as 10,000 seat covers. After unloading the truck, the pickers/sequencers will break down the shipment into various colors - parchment, graphite or black. The pickers will segregate the trim,

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<sup>2</sup> While the Employer took no position at hearing on whether its operations manager, Jerry Brown, was a Section 2(11) supervisor, the record supports a determination that Brown is a Section 2(11) supervisor within the meaning of the Act. Brown possesses and exercises the authority to hire, fire, and discipline employees. Accordingly, the Operations Manager is excluded from the bargaining unit.

<sup>3</sup> The Petitioner, in brief, conceded that Team Leader Ronnie Anderson did not possess any indicia which would demonstrate that he exercised supervisory authority and was thus properly included in the bargaining unit.

side shields and insulator kits in order to sequence the seats to match particular automobiles being manufactured by Ford. At the same time that the segregation/sequencing process is performed, the sorters perform a quality control function for the Employer. Sorters will inspect the sequenced parts for quality and make sure that all the parts are up to the customer's quality standards. Any material that the Employer perceives to be a quality problem is submitted to Lear for final determination. The sorting process is controlled by the customer, in that Lear will instruct the Employer which batches to ultimately reject. After the sequencing and sorting is completed, the Employer transports the material to Lear for assembly of the automobile seats.

Team leaders spend the vast majority of their time working side-by-side with the other agreed-upon unit employees performing unit work such as picking, assisting with sorting and delivering material to Lear. In addition to performing their duties on the production floor, team leaders perform a limited amount of clerical work for Lear for approximately 5-6 hours out of a 40-50 hour work week. The record establishes, and the parties apparently concede, that the team leaders share a substantial community of interest with other bargaining unit employees.<sup>4</sup> With the foregoing overview of the Employer's operations as backdrop, I now turn to the issue of whether the Employer's team leaders are Section 2(11) supervisors.

## **2. THE STATUS OF THE TEAM LEADERS**

As noted above, the Petitioner contends that two of the Employer's team leaders, Mark Sierras and Robert Bryson, are statutory supervisors and, therefore, should be excluded from the unit. Based on the record and applicable law, I find the Petitioner has not sustained its burden of proof that Sierras and Bryson are Section 2(11) supervisors and I shall, therefore, include them in the unit.

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<sup>4</sup> It is not disputed that the team leaders are hourly-paid, punch a time clock, and share similar working conditions and benefits as provided to other bargaining unit employees.

It is well established that the party who asserts that an individual is a Section 2(11) supervisor bears the burden of demonstrating the actual exercise of supervisory authority by the individual in question. NLRB v. Kentucky River Community Care, 532 US 706 (2001); Bennett Industries, 313 NLRB 1363 (1994). Only if the exercise of Section 2(11) authority is not merely routine, clerical, perfunctory, or sporadic in nature, but requires the use of independent judgment, is a finding of supervisory status appropriate. Byers Engineering Corp., 324 NLRB 740, 741 (1997), Juniper Industries, 311 NLRB 109, 110 (1993). Finally, established Board precedent demonstrates that the possession of any one of the indicia of supervisory authority specified in the statute is sufficient to confer supervisory status on an employee.

The evidence concerning the job functions of the team leaders was provided by the testimony of the Employer's President and Owner Lester Keene and the testimony of employee Foster King. In brief, the Petitioner asserts the team leaders are supervisors because they “. . . have the authority to hire, fire, suspend and/or effectively recommend discipline . . . .” In addition, the Petitioner claims that the team leaders “assign and direct all the other hourly employees in their daily work assignments, allocate overtime, and approve or disapprove time off.” Finally, the Petitioner submits that team leaders “are paid more and also attend a weekly management meeting . . . .” These points are discussed below.

It is well settled that secondary indicia of supervisory status are not dispositive in the absence of evidence indicating the existence of one of the primary indicia of such status as set out in the statute. North Jersey Newspapers Co., 322 NLRB 394 (1996). The existence of a pay differential has been held to be such a “secondary” indicator. McClatchy Newspapers, Inc., 307 NLRB 773 (1992). Accordingly, the fact that Sierras and Bryson are paid substantially more per

hour<sup>5</sup> than the other bargaining unit employees, standing alone, does not establish that the team leaders are supervisors under the Act. Likewise, the fact that the team leaders may attend supervisory meetings does not, without any primary indicia of supervisory status, establish the 2(11) status of Sierras and Bryson. McClatchy Newspapers, Inc., supra .

The record evidence of the exercise of primary indicia of supervisory authority by team leaders is scant. There is no probative evidence that team leaders have the authority to hire, fire, promote or discipline employees. While team leaders may approve requests for time off, it appears that such authority is of a routine nature and is limited to situations where staffing levels are such as to not impact production. Keene testified that decisions to grant time off “really goes to [Operations Manager Brown] . . . because we do have extra people, and we can cover one person or one or two persons, but no more than that. So - . . . that’s why it’s all got to go through [the Operation Manager] anyway.” In such limited situations, the team leaders appear to function as a conduit to convey employee requests for time off to the Operations Manager.

While team leaders undoubtedly attempt to insure the smooth flow of work at the Employer’s facility, such decisions to direct or move employees from job to job is controlled by the workflow and production needs. Indeed, as the operation of the entire facility consists of receiving, sequencing and sorting material in accordance with the instructions provided by Lear, the employees have little, if any, need for “direction” on the job. Merely checking to see if employees have properly picked or sorted materials or the shifting of employees from one job function to another in order to insure the flow of materials is simply a “function of routine work judgment and not a function of authority using the type of independent judgment required of a

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<sup>5</sup> Sierras is paid approximately \$15.00 an hour, while Bryson makes \$17.00 an hour. Unit employees make between \$8.00 and \$11.00 an hour. The pay differential for Sierras and Bryson pay is predicated primarily upon their longevity with the Employer.

statutory supervisor.” J.C. Brock Corp., 314 NLRB 157 (1994). See also, S.S. Joachim and Anne Residence, 314 NLRB 1191, 1194 (1994).

The evaluation of employee performance, along with the decision to promote or grant raises to employees, is determined exclusively by President Keene. The Employer, through Keene, has an established system where employees are awarded raises of 25 cents for every new job function learned. Overtime assignments are made by Operations Manager Brown, with team leaders serving merely as a means to communicate the granting or denial of overtime requests to bargaining unit employees.

On this record, the Petitioner has failed to present sufficient evidence to establish that the team leaders possess supervisory authority within the meaning of Section 2(11) of the Act, rather than the routine authority typical of non-supervisory lead personnel. The team leaders clearly share a community of interest with the other employees in the petitioned-for unit, and therefore should be included in the unit found appropriate herein.

## **II. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer employed at the Employer’s facility located in Atlanta, Georgia.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

All regular full-time and regular part-time employees, including pickers/sequencing employees, truck unloaders, sorters and team leaders employed by the Employer at its 4350 International Parkway, Suite A facility, Atlanta, Georgia, but excluding all office clerical employees, guards and supervisors as defined in the Act.

### **III. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Automobile Workers Region 8. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

#### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who are employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military Services of the United States

may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began; and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized.

To be timely filed, the list must be received in the Regional Office, Suite 1000, Harris Tower, 233 Peachtree Street, N.E., Atlanta, Georgia 30303, on or before April 22, 2005. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (404) 331-2858. If you have any questions, please contact the Regional Office.



### **C. Notice Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **IV. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, DC 20570-0001. This request must be received by the Board in Washington by 5:00 P.M., (EDT) on April 29, 2005. The request may **not** be filed by facsimile.

Dated at Atlanta, Georgia, on this 15th day of April, 2005.



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